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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

L.G.,

Plaintiff and Respondent,

v.

F.R.,

Defendant and Appellant.

D074413

(Super. Ct. No. DN149645)

APPEAL from a judgment of the Superior Court of San Diego County, Harry L. Powazek, Judge. Affirmed.

F.R., in pro. per., for Defendant and Appellant.

Jeffrey Bledsoe Lacy, for Plaintiff and Respondent.

Appellant F.R. (Father) appeals the trial court's order renewing a domestic violence restraining order requested by respondent L.G. (Mother). He contends the court abused its discretion by applying the wrong legal standard in determining whether to renew the order and that the court's findings are not supported by the evidence. As

discussed *post*, we hold the court applied the correct legal standard and Father has forfeited the argument concerning the sufficiency of the evidence due to his failure to provide an adequate record. Accordingly, we affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

Due to the limited record provided by appellant, our understanding of the underlying proceedings is constrained. As represented in their respective briefs, Mother filed a paternity action in 2008 seeking child support and custody orders. Mother and Father are the parents of a 12-year-old boy.

At the same time, the court issued a domestic violence restraining order protecting Mother from Father for five years. The court renewed the restraining order in 2013 for another five-year period. The record on appeal does not disclose the findings underlying the original restraining order or the basis for the prior renewal.

Recently, Mother filed a request to renew the restraining order for another five years and also requested a move-away order to allow her to relocate with her son to Utah. The record does not contain Mother's requests for orders or the supporting evidence.

Following a hearing at which both Mother and Father testified, the court granted both of Mother's requests. It extended the restraining order for another five years based on its review of the court file and the "intensity" of Father's testimony. The court also found it was in the best interests of the child to allow Mother to move to Utah and retain legal and physical custody of their son.

Father filed a premature notice of appeal from the court's minute order after hearing. We construe the appeal as being from the formal findings and order after

hearing entered after the filing of the notice of appeal. (Cal. Rules of Court, rule 8.104(d)(2); see *Vitkievich v. Valverde* (2012) 202 Cal.App.4th 1306, 1310, fn. 2.)

## DISCUSSION

On appeal, Father challenges only the renewal of the restraining order. As framed by Father, the issue on appeal is whether the trial court "abuse[d] its discretion in finding that [Father]'s purported conduct, specifically one, single e-mail in which [Father] conveyed his belief that the North San Diego County Family Law Court is corrupt, that he believes there is a conspiracy because he has done nothing wrong[] warrant restraint under the Domestic Violence Prevention Act[.]"

As represented by the parties, the court issued the initial restraining order in 2008 and the most recent order was the second renewal of the restraining order. Family Code section 6345, subdivision (a) permits a court to renew an existing domestic violence restraining order "upon the request of a party, either for five years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party."

In considering whether to renew a restraining order, the court " 'must find the probability of future abuse is sufficient that a reasonable woman (or man, if the protected party is male) in the same circumstances would have a "reasonable apprehension" such abuse will occur unless the court issues a protective order.' " (*Rybolt v. Riley* (2018) 20 Cal.App.5th 864, 874 (*Rybolt*).) The court's finding that the protected individual has a reasonable apprehension of future abuse must be supported by a preponderance of the

evidence demonstrating it is " ' "more probable than not there is a sufficient risk of future abuse to find the protected party's apprehension is genuine and reasonable." ' " (*Ibid.*) We review the trial court's ruling for an abuse of discretion. (*Rybolt*, at p. 874; *Lister v. Bowen* (2013) 215 Cal.App.4th 319, 333 (*Lister*).)

On appeal, Father first contends the trial court abused its discretion by applying the wrong legal standard. To support this argument, Father includes a statement of the trial court that it found " 'domestic violence and/or *restrainable* conduct' " to support the renewal of the restraining order. Father contends that the court must have applied the wrong standard "because none of the conduct complained of fits within the definition of 'abuse.' " "

Father does not provide a citation to the record for this purported statement by the court and it is not clear where this statement was made. Even assuming the court made such a statement, however, it does not support any finding of error. It appears Father is suggesting that his current actions do not rise to the level of "abuse" sufficient to renew the restraining order. But Mother did not allege any current domestic violence or "restrainable conduct," which is not required to renew the order. (Fam. Code, § 6345, subd. (a) [restraining order may be renewed "without a showing of any further abuse since the issuance of the original order"].) If the court was simply reiterating that the initial restraining order was premised on a finding of abuse, Father "is not permitted 'to challenge the truth of the evidence and findings underlying the initial order.' " (*Lister*, *supra*, 215 Cal.App.4th at p. 333.) The existence of this initial order is certainly relevant

to the analysis of whether to renew the order. (*Ibid.*) The record reveals the court applied the correct standard to determine whether to renew the restraining order.

Father next contends that the court's order is "not supported by the facts." He first contends that Mother "presented no reasonable proof of past acts of abuse." As stated *ante*, Father is not permitted to challenge the truth of the evidence and findings underlying the initial order. (*Lister, supra*, 215 Cal.App.4th at p. 333.) Father also challenges the court's finding that Mother has a reasonable apprehension of future abuse, but fails to provide the necessary record to support this claim. The trial court indicated that in reaching its decision to renew the restraining order, it considered the parents' testimony at the hearing, a recent family court services report, text messages submitted in support of Mother's request to renew the order, as well as the entire case file, including the initial restraining order request and the parents' filings in relation to that request and the subsequent renewal. Appellant, however, designated a clerk's transcript including only the court's minute order and filings relating to the appeal. Although the record includes a reporter's transcript of the hearing, both parents referred in their testimony to documents contained in the trial court record that appellant did not designate in his record on appeal.

"[I]t is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment. [Citations.] 'This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' "

(*Jameson v. Desta* (2018) 5 Cal.5th 594, 608-609.) " ' "A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed." ' [Citation.] 'Consequently, [the appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [the appellant].' " (*Id.* at p. 609.)

The absence of an adequate record also results in the parties disregarding the rules requiring factual assertions made in an appellate brief to be supported with citations to the record. (Cal. Rules of Court, rule 8.204(a)(1)(C).) Appellant's opening brief contains only one record citation.<sup>1</sup> "An appellant who fails to cite accurately to the record forfeits the issue or argument on appeal that is presented without the record reference." (*Alki Partners, LP v. DB Fund Services, LLC* (2016) 4 Cal.App.5th 574, 589.)

Applying these principles is not merely a matter of elevating procedure over practicality. Without an adequate record, it is impossible for this court to review the trial court's findings to determine whether they are supported by sufficient evidence. Based on the record presented, there is no obvious error by the court. As the party bearing the burden of demonstrating prejudicial error, Father has not established a valid basis for reversal of the order.

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<sup>1</sup> Although Mother, as respondent, bears no burden of demonstrating the absence of error, her brief includes some citations to the record but likewise makes numerous factual assertions without evidentiary support.

DISPOSITION

The order is affirmed. Respondent is awarded her costs on appeal.

O'ROURKE, J.

WE CONCUR:

HUFFMAN, Acting P. J.

NARES, J.